

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2021-316-C - ORDER NO. 2022-121

FEBRUARY 10, 2022

IN RE:	Application of Lynches River Communications,)	ORDER DESIGNATING
	Incorporated for Designation as an Eligible)	LYNCHES RIVER
	Telecommunications Carrier in the State of)	COMMUNICATIONS, INC.
	South Carolina)	AS AN ELIGIBLE
		TELECOMMUNICATIONS
		CARRIER

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Lynches River Communications, Incorporated (“Lynches River” or “Company”) for designation as an Eligible Telecommunications Carrier (“ETC”) in the State of South Carolina.

Lynches River seeks designation as an ETC pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 (“Telecommunications Act” or “Act”)¹, as amended, Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission (“FCC”)², and Section 103-690 of the South Carolina Code of Regulations (“Regulation(s)”)³. As part of its ETC Application, the Company requests a waiver of Regulation 103-690.C.(a)(1)(B), regarding submission of a two-year plan describing proposed improvements or upgrades to its network.

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. §§ 54.101-54.207.

³ S.C. Code Regulation § 103-690.

After a full Commission hearing, and upon review of the Application and the supporting documents submitted by Lynches River, and for reasons explained in this Order, the Commission concludes that the Application, together with the requested Regulation waiver, should be approved and that the Company is granted the designation as an ETC on the terms provided in this Order. The Commission further concludes that it would serve the public interest to approve the Application and designate the Company as an ETC.

II. PROCEDURAL HISTORY

Lynches River filed its application ("Application") for designation as an ETC on September 28, 2021. As directed by the Commission, notice of the filing of the application was published and proof of publication provided to the Commission on November 10, 2021. The purpose of the notice was to inform interested parties of the manner and time in which to file appropriate pleadings for participation in the proceedings. No Petitions to Intervene were filed.

On November 22, 2021, Lynches River filed the verified direct testimony of Dustin Catoe in support of the Company's Application. The South Carolina Office of Regulatory Staff ("ORS"), a statutory party in this matter pursuant to S.C. Code Ann. section 58-4-10(B) (Supp. 2021), reviewed Mr. Catoe's testimony, the Application, and other accompanying documents. As a result of the review, ORS supports Lynches River's request for ETC designation.

On December 8, 2021, ORS and Lynches River filed a stipulation ("Stipulation") with the Commission. ORS asserts the Company's designation as an ETC would serve the public interest and recommends its approval in accordance with the terms of the Stipulation.⁴

⁴ The Revised Stipulation corrected a former incorrect reference to the statutory definition in South Carolina Code Section 58-4-10(B) from the Stipulation filed on December 8, 2021. All other terms and conditions in the Revised Stipulation (filed January 19, 2022) are the same as found in the Stipulation filed on December 8, 2021.

The Commission held a virtual hearing on January 12, 2022 at 2:00 P.M. before the full Commission. Chairman Justin T. Williams presided. Attorney Scott Elliott represented Lynches River, and attorney Katie Zach of Lance J.M. Steinhart, P.C. was also in attendance on behalf of the Company. ORS did not appear for the hearing.

Following the hearing, a revised late-filed stipulation (“Revised Stipulation”) was filed by the Company, updating certain statutory authority. A copy of the Revised Stipulation is attached hereto as Order Exhibit No. 1. On January 21, 2022, the Commission – having received and reviewed all the evidence – issued a Directive approving the Company’s request for ETC designation. Further, the Commission requested the Company make paper copies of the Application available in its offices and provide them to members of the public by reasonable means.

III. EVIDENCE OF RECORD

Dustin Catoe, Chief Financial Officer of Lynches River, appeared virtually during the hearing and testified in support of the Company’s Application. According to the testimony, Lynches River seeks designation as an ETC for its entire service area in South Carolina. (Catoe Direct Testimony, p. 4, lines 2-3.) The Company intends to “provide high speed fiber optic internet services to the home as well as Voice over Internet Protocol (“VoIP”) voice phone service to consumers.” (Application, p. 3.) ETC designation is requested by the Company “solely to provide Lifeline service” to qualifying South Carolinians. (Application, p. 1.) Therefore, access to funds from the federal Universal Service Fund (“USF”) for high-cost areas will not be sought. (*Id.*)

According to the evidence, Lynches River was organized in Pageland, South Carolina on September 30, 2019, and is currently in good standing. (Catoe Direct Testimony, p. 1, lines 9-11.)

Lynches River is a subsidiary of Lynches River Electric Cooperative ("LREC"), a member-owned cooperative that has provided electric energy and related services to the area for decades. (Catoe, p. 1, lines 13-16.) Currently, Lynches River provides high-speed fiber internet and phone service through RiverNet Connect in Chesterfield, Kershaw, and Lancaster counties. (Catoe, p. 1, lines 11-13; p. 3, lines 4-5.)

Lynches River intends to update its offerings by providing subsidized Lifeline voice and broadband services, including a stand-alone voice service offering, to qualifying low-income consumers, pursuant to Section 54.405(a) of the FCC's rules (47 C.F.R § 54.405(a)). (Application, p. 6; Stipulation pp. 2-3.) The Company will provide services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC's rules (47 C.F.R. § 54.101(a)) throughout South Carolina. (*Id.*) These services include "voice telephony service," which is required for ETCs in order to receive federal support. 47 C.F.R. § 54.101(b).

Lynches River is deemed a "common carrier" under the Act, according to Mr. Catoe's affidavit dated September 22, 2021. (Affidavit of Dustin Catoe, p. 1.) By affidavit, Mr. Catoe attests to the following:

- Lynches River certifies that it will meet all of the FCC's requirements for designation as an ETC under Section 214 (e)(1) of the Act, and all of the requirements of the South Carolina Public Service Commission for designation as an ETC.
- Lynches River does offer or will offer the services that are supported by the federal universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services.

- Lynches River does or will advertise in a media of general distribution the availability of such services, including Lifeline services and the applicable charges.
- Lynches River commits to provide the services and functionalities required for designation as an ETC in its proposed ETC Designation Area.

(Affidavit, pp. 1-2.)

According to the Application, “Lynches River commits to offer a local usage plan that will be comparable to the plan offered by incumbent local exchange carriers” in its area. (Application, p. 8.). The Company also “commits to satisfying all...requirements related to consumer protection and service quality standards.” (*Id.*) Furthermore,

Lynches River commits that its fiber optic network will have the ability to remain functional in emergency situations, will have [a] reasonable amount of backup power to ensure functionality without an external power source, will be able to reroute traffic around damaged facilities, and will be capable of managing traffic spikes resulting from emergency situations.

(Application, p. 8.)

IV. APPLICABLE LAW

Section 214(e)(2) of the Telecommunications Act authorizes state commissions to designate common carriers as ETCs if the carrier meets certain requirements. 47 U.S.C.A. 214(e)(2). Under the Act, the carrier must:

- (1) offer the services that are supported by Federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (2) advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C.A. § 214(e)(2).

The South Carolina Code of Regulations further establishes the requirements that an applicant must meet to be designated an ETC for the purpose of receiving federal universal service support. *See* S.C. Code Ann. Regs. 103-690 (2012). The requirements for ETC designation are as follows:

- (1) commit to providing service throughout the proposed designated service area to all customers making a reasonable request for service.
- (2) demonstrate its ability to remain functional in emergency situations.
- (3) demonstrate that it will satisfy applicable consumer protection and service quality standards.
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.
- (5) certify by affidavit signed by an officer of the company that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.
- (6) certify by affidavit signed by an officer of the company that it does offer or will offer the services that are supported by the federal universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services.
- (7) certify by affidavit signed by an officer of the company that it does or will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges.

S.C. Code Regs. 103-690(C)(1-7). The equal access requirement set out in Regulation 103-690(C)(5) is no longer required by federal law. *Compare* 47 C.F.R § 54.202(a)(5) (2020) *with* 47 C.F.R § 54.202(a)(5) (2007). As such, the Commission will waive this requirement.

V. ANALYSIS

As demonstrated in the Application, the testimony, and the Revised Stipulation, the Company satisfies all the relevant requirements for designation as an ETC specified in Sections 254 and 214 of the Telecommunications Act and Regulation 103-690. The Company has:

- certified that it will comply with the service requirements;
- demonstrated its ability and commitment to remain functional in emergency situations;
- demonstrated its commitment to satisfy applicable consumer protection and service quality standards, including annual certification of its compliance and reporting of consumer complaints in accordance with Regulations 103-690.C(a)(3) and 103-690.1.B(b)(4), S.C. Code Ann. Regs. 103-690.C(a)(3) & 103-690.1B(b)(4) (2012);
- demonstrated that the Company is financially and technically capable of providing the service;
- demonstrated that it will provide local usage plans comparable to the incumbent local exchange carriers already operating in the area; and
- committed to comply with applicable federal and state reporting requirements including, but not limited to, submitting reports regarding unfulfilled service requests under Regulation 103-690.1.B.(b)(3) and other annual reports required by Regulation 103-690.1. S.C. Code Ann. Regs. 103-690.1 (2012).

Additional requirements for federal universal support include voice telephony service or voice grade access to the public switched telephone network (“PSTN”), according to Section 54.101(b) of the FCC's rules. 47 CFR § 54.101(b); *see also* S.C. Code Ann. Regs. 103-690.1. Based on its Application, Lynches River will provide “IP-based voice service that is interconnected to the PSTN.” (*See* Application, p. 5.) Pursuant to Section 54.405(a) of the FCC's rules (47 C.F.R § 54.405(a)), Lynches River will offer subsidized Lifeline voice and broadband services, as well as a stand-alone voice service offering, to qualifying low-income consumers. (Application, p. 6; Revised Stipulation pp. 2-3.) The Company further acknowledges it will be legally responsible for dealing with customer concerns, “providing quality of service guarantees, and meeting universal service-related requirements.” (Application, p. 5.)

Lynches River requests ETC designation for its entire service area in South Carolina. (Catoe Direct Testimony, p. 4, lines 2-3.) A copy of the proposed designation area is included herein as Order Exhibit No. 2.

Considering the evidence before it, the Commission concludes that Lynches River meets the requirements for ETC designation. Furthermore, it is in the public interest that the Commission grant the Company designation as an ETC for the purpose of providing voice and broadband internet access services. *See* 47 C.F.R. 11 54.101(d) (West) and S.C. Code Ann. Regs. 103-690.1 (2012). Additionally, Lynches River’s request for a waiver of the initial two-year plan requirement of S.C. Code Ann. Regs. 103-690 (C)(a)(1)(B) is appropriate and not contrary to the public interest; therefore, it is also granted.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making this finding and all other findings and conclusions of law stated above in this Order, the Commission specifically finds and concludes as follows:

1) Lynches River is a current provider of high-speed fiber internet and phone service through a service called RiverNet Connect.

2) Lynches River is seeking ETC designation strictly to provide Lifeline service to qualifying South Carolina consumers and will not seek any high-cost support of the federal Universal Service Fund.

3) ORS does not oppose Lynches River's Application and waiver request, and the matter is uncontested.

4) Lynches River meets all federal and state requirements for designation as an ETC in the proposed area where it seeks designation, except for the requirement for which waiver is requested and specifically granted, as included herein.

5) According to the Revised Stipulation, Lynches River certifies that all low-income USF funding it receives will be used to provide a credit to its Lifeline eligible customers, consistent with 47 C.F.R. § 54.403.

6) Lynches River shall offer the services that are supported by Federal universal service support, including subsidized Lifeline voice, broadband services, and a stand-alone voice service offering, as required by Section 54.405(a) of the FCC's rules.

7) Lynches River shall advertise the availability of such services and the charges therefor using media of general distribution as required by S.C. Code Reg. 103-690.C(a)(1)(C)(7) and Section 54.201(d)(2) of the FCC's regulations.

8) The Commission grants Lynch River a waiver of Regulation 103-690.C, the requirement to file a two-year plan describing proposed improvements or upgrades to its network. The Commission may waive a rule or regulation where circumstances indicate that a waiver is appropriate, upon a finding that such waiver is not contrary to the public interest. In lieu of filing the two-year plan provided for in Regulation 103-690.C.(a)(l)(B), the Company shall make available to the Commission and ORS all reports it is required to file in connection with federal funding. The Company shall provide ORS with estimated timelines for the area it proposes to serve. We conclude that providing the referenced reports to the Commission and to ORS provides a mechanism by which to measure the Company's progress towards the availability of voice and broadband service in the designated area, and is, therefore, an acceptable alternative to the two-year plan filing requirement.

9) Lynch River commits to provide service throughout its proposed designated service area to all customers making a reasonable request for service.

10) Granting this Application allows the Company to build out underserved and unserved areas, bringing the benefits of voice and high-speed broadband to citizens in those areas; therefore, the designation of Lynch River as an ETC is in the public interest.

VI. ORDERING PROVISIONS

IT IS THEREFORE ORDERED THAT:

1. The Commission adopts and approves the Revised Stipulation executed between Lynch River and ORS, which is incorporated into and made a part of this Order as Order Exhibit No. 1.

2. The Commission grants Lynches River designation as an ETC as of the effective date of this Order and in the areas identified in Order Exhibit No. 2, for the purpose of providing voice and broadband internet access services, as requested in the Application and by the terms provided in the Revised Stipulation, Order Exhibit No. 1.

3. Lynches River shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.

4. Lynches River shall make available to the Commission and ORS all reports it is required to file with the FCC in connection with federal funding, including that which is described in the Revised Stipulation between ORS and the Company filed in this docket.

5. Except as provided in this Order, Lynches River shall meet the reporting and certification requirements for ETCs as outlined by the federal requirements and Regulation 103-690.1 and file the annual reporting information with the Commission no later than June 30th of each year. A copy of this report shall also be provided by the Company to ORS.

6. The Commission grants Lynches River's request for a waiver of Regulation 103-690.C.(a)(1)(B) requiring it to file a two-year plan describing proposed improvements or upgrades to its network, and of Regulation 103-690.1.B.(b)(l) regarding annual updates to the two-year plan.

7. The Commission further grants a waiver of the equal access requirement set out in Regulation 103-690.C.(a)(5), which is no longer required.

8. Lynches River shall provide voice and broadband services in conformity with 47 U.S.C.A. 214(e)(2), 47 C.F.R. 54.101 *et seq.*, and Regulation 103-690.1 (E)(a).

9. Lynches River shall advertise the availability of Lifeline using media of general distribution. Further, Lynches River shall make paper copies of the Application available in its offices and provide paper copies to members of the public by any other reasonable means.

10. Lynches River is to offer Lifeline credits consistent with the rates, terms, and conditions contained in its rate schedules and website and will publish the availability and the pricing of these offerings on its website or public forum accessible by Lifeline eligible low-income consumers.

11. The Commission may deny Lynches River's annual recertification or revoke its ETC designation if it fails to fulfill the requirements of the Act, the Commission's rules, or the terms of the Revised Stipulation.

12. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:




Justin T. Williams, Chairman
Public Service Commission of
South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2021- 316- C

January 13, 2022

IN RE: Application of Lynch's River Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of South Carolina)
)
) **REVISED**
) **STIPULATION**

This Stipulation is made by and among the South Carolina Office of Regulatory Staff (“ORS”) and Lynches River Communications, Inc. (“Company”) (collectively referred to as the “Parties” or sometimes individually as a “Party”).

WHEREAS, on September 28, 2021, the Company filed its Application requesting designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of offering Lifeline Services through VoIP voice phone service to customers in Chesterfield, Kershaw, and Lancaster counties;

WHEREAS, ORS has reviewed the Application and testimony of Dustin Catoe which was filed on November 22, 2021;

WHEREAS, the Company requests ETC designation solely to provide Lifeline services to qualifying South Carolina Consumers; as outlined in the Company's Application;

WHEREAS, as a result of its investigation, ORS has determined that subject to the provisions set forth below, the Company's request for designation as an ETC should be approved;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1. The Company is a high-speed fiber internet and phone service provider through a service called RiverNet Connect.
2. The Company has requested ETC designation in South Carolina for Lifeline-only.
3. The Company has limited its requested Universal Service Fund ("USF") support to the Federal USF low income support program. The Company certifies that all low income USF funding it receives will be used to provide a credit to its Lifeline eligible customers, consistent with 47 C.F.R. 54.403.
4. The Company will contribute to the federal and state USF and will remit all applicable surcharges and fees in South Carolina, including the E911 surcharge.
5. The Company agrees to advertise the availability of Lifeline using media of general distribution.
6. The Company is to offer Lifeline credits consistent with the rates, terms, and conditions contained in its rate schedules and website and will publish the availability and the pricing of these same offerings on its website or public forum accessible by Lifeline eligible low income consumers.
7. Until modified by the Commission, the Company agrees to utilize the means test established by the FCC and set forth in 47 C.F.R. 54.409.
8. The Company agrees to notify the Commission and the Office of Regulatory Staff ten (10) days in advance of any changes to its Lifeline rates in South Carolina, or the pricing, or changes in pricing of any plans offered to South Carolina Lifeline customers.
9. The Company agrees to advertise its rate plans on its website.

10. The Company will offer subsidized Lifeline voice and broadband services, including a standalone voice service offering, to qualifying low-income consumers in accordance with the FCC's rules within its proposed ETC Designation Area.

11. The Company agrees that it will abide by all advertising, reporting and verification requirements established by the FCC and the Commission.

12. The Company agrees to provide ORS any FCC Citations issued against the Company's Lifeline South Carolina customers, within five (5) days of notice to the Company by the FCC of the customer citation.

13. The Company agrees to file all reports requested by ORS or the Commission, including but not limited to: the "Telecommunications Company Annual Report," the "Authorized Utility Representative Form," the "Gross Receipts Form," and the "USF Worksheet." All of which may be found on the ORS website at www.ors.sc.gov in the telecommunications forms and resources section.

14. The Company agrees to file with the ORS a certified true copy of its Form 481, Form 497, and Form 555 filed with the Universal Service Administrative Company ("USAC"), and all other reports required to be filed with the States by federal requirements including revisions thereto, no later than five (5) calendar days after the Form or revision is filed with USAC.

15. If the designations sought herein are granted, The Company agrees to pay the annual gross receipts assessment in accordance with S.C. Code § 58-3-100 and S.C. Code § 58-4-60.

16. The Company agrees to implement or to participate in a program for initial certification and annual verification that ensures that an eligible Lifeline customer only receives one Lifeline credit per residential address.

17. If the designations sought herein are granted, the Company will be supporting Universal Service in South Carolina based on its total South Carolina retail end user revenues, and must submit all documentation and Universal Service fees required by South Carolina.

18. The Company agrees to submit a quarterly report to ORS demonstrating the number of Lifeline customers who have been deactivated by the Company during the quarter due to: (1) non-usage on their customer account during two consecutive 30-day periods; (2) customer failure to comply with or pass the annual verification requirement; or (3) voluntary customer-requested deactivation. In addition, consistent with the annual reporting commitments contained in its approved Compliance Plan, the Company agrees to file state specific reports with ORS.

19. The Company agrees that ORS may examine the Company's records and documentation to ensure that the universal service support the Company receives is being used for the purpose for which it was intended. The Company is required to provide such records and documentation to ORS upon request. The Company agrees that if it fails to fulfill the requirements of the Act, the Commission's rules, or the terms of this agreement after it begins receiving universal service support, the Commission or ORS may exercise its authority to seek to revoke the Company's ETC designation.

20. The Company agrees that its ETC designation is non-transferable to new owners and is cancelled upon discontinuance of service.

21. The Company shall comply with all applicable state and federal laws, rules, and regulations regarding ETC designation and reporting requirements. More specifically, The Company agrees to abide by the Commission regulations regarding designation of an ETC found in 10 S.C. Code Ann. Regs. 103-690 (2012) as well as requirements, applicable to the Company, set out by the FCC for ETC designation and for participation in the Lifeline program (e.g. FCC Regulation Subpart E – Universal Service Support for Low-Income Consumers).

22. Subject to the provisions set forth herein, ORS does not oppose the Application of the Company for designation as an eligible telecommunications carrier.

23. ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (2019). S.C. Code § 58-4-10(B) reads in part as follows:

...‘public interest’ means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Stipulation reached among the Parties serves the public interest as defined above.

24. The Parties agree to advocate that the Commission accept and approve this Stipulation in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any

Commission order issued approving this Stipulation and the terms and conditions contained herein.

25. The Parties represent that the terms of this Stipulation are based upon full and accurate information known as of the date this Stipulation is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Stipulation is based, either Party may withdraw from the Stipulation with written notice to the other Party.

26. The Parties agree that signing this Stipulation will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation in its entirety without penalty or obligation.

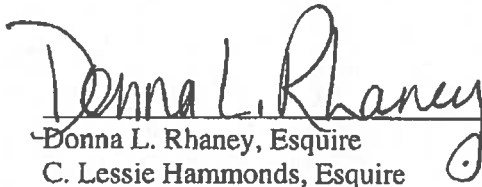
27. This Stipulation shall be interpreted according to South Carolina law.

28. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Stipulation. The Parties agree that in the event any Party should fail to indicate its consent to this

Stipulation and the terms contained herein, then this Stipulation shall be null and void and will not be binding on any Party.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

Representing the South Carolina Office of Regulatory Staff

A handwritten signature in black ink, reading "Donna L. Rhaney", is written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Application of Lynches River Communications, Inc. for
Designation as an Eligible Telecommunications Carrier in
the State of South Carolina

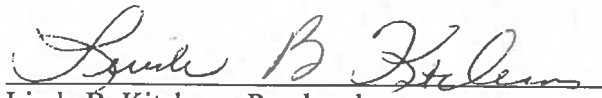
DOCKET NO.: 2021-316-C

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PLEADING: REVISED STIPULATION

January 19, 2022


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